

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

JEREMIAH HORNE,

Plaintiff,

vs.

CIV 2:10-0312-JCH-GBW

UNITED PARCEL SERVICE,

Defendant.

**ORDER GRANTING LEAVE TO AMEND**

This matter is before the Court on Plaintiff's Motion for Leave to File Plaintiff's First Amended Complaint. *Doc. 15*. The matter is fully briefed and a hearing was held on October 7, 2010. *Docs. 21, 22, 24*.

Plaintiff Horne seeks to amend his Complaint claiming racial discrimination by Defendant to add a second plaintiff, Dan Smelser. Mr. Smelser also claims that Defendant discriminated against him on the basis of his race.

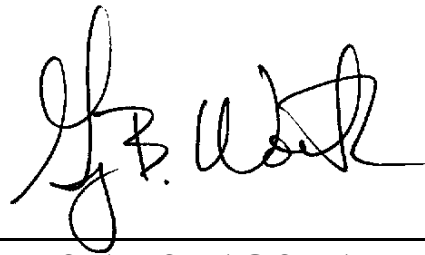
Federal Rule of Civil Procedure 15(a), which governs such requests, commands that the "court should freely give leave when justice so requires." FED. R. CIV. P. 15(a). "Refusing leave to amend is generally only justified upon a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of the amendment." *Frank v. U.S. West, Inc.*, 3 F.3d 1357, 1365 (10th Cir. 1993). The essence of Defendant's opposition, whether it be classified under prejudice or futility, is that the joinder of the claims of these

two individuals is improper under Federal Rule of Civil Procedure 20. Rule 20 permits plaintiffs to join their claims together in a single action when they assert a right to relief “arising out of the same transaction, occurrence, or series of transactions or occurrences” and “any question of law or fact common to all plaintiffs will arise in the action.” FED. R. CIV. P. 20(a)(1).

Defendant argues that joinder of Plaintiff Horne’s and Mr. Smelser’s claims would be improper because they are of different races and they “allege a pattern and practice of race discrimination against them based on their own different races.” *Doc. 21* at 4 (emphasis in original). It is true that these two individuals are of different races and that they allege a “caste system” whereby Whites were treated better than Hispanics who were treated better than Blacks (Plaintiff Horne) and Asians (Mr. Smelser). *Doc. 22* at 2-3. However, the nature of these allegations do not render their claims unable to be joined under Rule 20. Both individuals are making (1) a claim of racial discrimination to the disadvantage of non-whites (2) against the same small office of the same company (3) against the same small group of management officials (4) over the same time period. The Court finds that the claims of these two individuals arise out of the same series of transactions and occurrences, and that questions of both law and fact common to both plaintiffs will arise in the action. *See* FED. R. CIV. P. 20(a)(1).

Therefore, Plaintiff's Motion for Leave to File First Amended Complaint shall be granted. Plaintiff is directed to file the amended complaint which was attached to his motion as an exhibit.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "J. B. West", is positioned above a horizontal line.

UNITED STATES MAGISTRATE JUDGE